

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

In the matter of

XXXXX

Petitioner

File No. 91123-001

v

Blue Cross Blue Shield of Michigan  
Respondent

/

Issued and entered  
this 9<sup>th</sup> day of September 2008  
by Ken Ross  
Commissioner

**ORDER**

**I**  
**PROCEDURAL BACKGROUND**

On July 22, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on July 29, 2008.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on August 6, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM *Community Blue Group Benefits Certificate* (the certificate). Rider *CB-CSR (Community Blue Cost Sharing Requirements)* also applies. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

## **II FACTUAL BACKGROUND**

In October 2003, the Petitioner was diagnosed with bilateral breast cancer. She had a bilateral mastectomy at the XXXXX in XXXXX. In 2003 and 2005 she sought oncology treatment in the Upper Peninsula of Michigan where she lives. In March 2004 she underwent 33 treatments of radiation at XXXXX. This year she wants to go back to XXXXX to continue her oncology treatment without paying the higher nonpanel deductibles and copayments associated with non-network providers. BCBSM did not approve her referral to XXXXX.

The Petitioner appealed BCBSM's decision. BCBSM held a managerial-level conference on July 1, 2008, and issued a final adverse determination dated July 10, 2008.

## **III ISSUE**

Did BCBSM correctly deny approval for the Petitioner's referral to the XXXXX?

## **IV ANALYSIS**

### **Petitioner's Argument**

The Petitioner says that she was initially treated near her home for her breast cancer. However, she was very dissatisfied with this treatment and went for a second opinion at XXXX. They found two different types of cancer in her left and right breast. She then had a bilateral mastectomy at XXXXX.

XXXXX recommended a dose dense chemotherapy program to treat her two types of cancer. She has had difficulty receiving the recommended care in Michigan. She did return to XXXX and received 33 treatments of radiation because her doctor in XXXXX did not believe radiation was necessary. XXXXX then recommended Herceptin chemotherapy. Again she had a problem receiving this care near her home. She was required to go to XXXXX Hospital to find someone to provide this treatment.



The Petitioner believes that it is in her best interest to receive her oncology treatment at XXXXX. She wants BCBSM to approve her referral to XXXXX so that she can receive the care she needs without paying the high nonpanel deductible and copayment that she cannot afford to pay.

#### BCBSM's Argument

BCBSM says that Petitioner's rider amends the certificate and provides for three circumstances where nonpanel cost sharing requirements will not apply if a member seeks treatment outside the state of Michigan: 1) with a BCBSM approved referral from a Michigan PPO panel provider, 2) for treatment of an accidental injury or a medical emergency, or 3) for covered services received when there is no preferred provider panel.

BCBSM states that it cannot waive the out-of-network cost sharing requirements because the Petitioner's care was not provided on an emergency basis, medical oncology services for bilateral breast cancer are available in the Upper Peninsula, and there are PPO panel providers for the medical oncology services needed.

During the managerial level conference, the Petitioner stated that she sought care at XXXXX because in Michigan she was not receiving proper diagnosis and treatment. BCBSM indicated that she has the right to secure the services of the physician she feels is the best oncologist for her regardless of where that person practices or whether that person participates with BCBSM. However, that choice comes with consequences for out-of-pocket expenses.

Therefore, BCBSM believes it has acted properly when it failed to approve the Petitioner's referral to an out-of-state provider.

#### Commissioner's Review

The BCBSM rider indicates that, if covered services are obtained outside the state of Michigan, the nonpanel cost sharing requirement will apply unless one of the three situations described above is present. However, in the Petitioner's case none of those circumstances are present.

The Commissioner is sympathetic to the Petitioner's situation. She wants to have her care at XXXXX which has treated her in the past. However, the records submitted for this review indicate that she can be treated near her home. Therefore, BCBSM is not required to waive the Petitioner's nonpanel cost sharing requirements for treatment at the XXXXX.

**V  
ORDER**

BCBSM's final adverse determination of July 10, 2008, is upheld.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.